

UNDERSTANDING THE E-RATE PROGRAM

YEAR 10 EDITION

2007-2008 FUNDING CYCLE

Virginia Department of Education

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Forward

E-Rate is entering its tenth year of funding discounted telecommunications and Internet services to schools and libraries. The E-Rate program was enacted into law with the Telecommunications Act of 1996. The law directed the Federal Communications Commission (FCC) to establish a mechanism to provide schools and libraries with discounted telecommunications and advanced services.

During the first few years of the E-Rate program, a few instances of waste, abuse, or outright fraud were discovered. As vendors and applicants devised creative or illegal schemes to maximize discounts or defraud the program, the FCC and Schools and Libraries Division (SLD) incrementally tightened rules and policies to a point where some schools and libraries have simply walked away.

Approximately 20 percent of funding requests were denied in the early years because of process or procedure errors – a box not checked on a form, a missed deadline, or any of a number of other problems. Even after funding has been granted, over 20 percent of E-Rate money goes unclaimed. For example, in Fund Year 2003, Virginia schools and libraries applied for \$39 million in E-Rate discounts but received \$32 million funding commitments. By the deadline to claim funds, only \$25 million ultimately went back to applicants. It is not known how many applications were lost or rejected.

Because E-Rate funding is never certain, the Department of Education does not recommend incorporating E-Rate discounts into school budgets before a funding commitment letter is in hand. Commitment decisions for Virginia applicants the past few years were delayed well into the funding year in many cases.

With new leadership at the FCC, a number of applicant friendly appeal decisions were issued beginning in early 2006. Several admonished the SLD to be more proactive and responsive to applicant needs. With luck, this, the tenth year of E-Rate funding will be less painful for applicants.

This booklet is designed to help administrators, school and library boards, and technology coordinators better understand the program so that they may maximize E-Rate discounts and minimize denials during the Year Ten (Year 2007) funding cycle.

I. Recent Orders of Significance

Since FCC Chairman Kevin Martin realigned the Commission after he was named Chairman last year, a number of applicant-friendly decisions have been issued. The underlying theme of these decisions appears to stress that, barring fraud or abuse, applicants should be given every latitude to receive discounted service authorized through the Telecommunications Act.

Alaska Gateway

Applicants were granted waivers for filing late Forms 486. If a Form 486 is filed more than 120 days after the start of services or the date of the Funding Commitment Letter, whichever is later, the service start date is adjusted one day for each day past the 120 deadline the form is postmarked. The effect is a reduction in funding. While the Commission kept the Form 486 deadline for all applicants, it directed SLD to provide applicants with additional deadline notification and provide applicants at least 15 days to submit the form.

The Alaska Gateway Order removed the deadline for submission of certifications but not the forms themselves.

Bishop Perry

Bishop Perry remanded 196 applications, including a state application from North Dakota, to the SLD for minor errors on the Form 470, Form 471, or late filed certifications. On an ongoing basis, the FCC stressed that deadlines for filing forms will remain; however, certifications can be submitted after deadlines have passed. Specifically, the SLD is charged with improving applicant training and notifying applicants of late certifications and to give applicants 15 days from the date of notification to submit certifications.

Gayville-Volin School District 63-1

The FCC appeared to overrule the SLD on the two date – two signature contract requirement instituted under the Fifth Report and Order (below). As late as September Virginia applicants were still being denied on the 2S/2D rule. In Gayville-Volin, the FCC remanded an application for an applicant that was unable to produce a signed contract during PIA review. On appeal they produced minutes from a school board meeting that approved the contract. This, the FCC reasoned, was sufficient to prove a “binding agreement” for E-Rate purposes.

COMAD Remand Order – January 2005

COMAD (COMmitment ADjustment) This order directs USAC to seek recovery of funds from the party responsible for violation of statute or rule. For example, if funds have been paid by USAC and it was later discovered that the vendor was on “Red light” during the period when funds were disbursed, USAC will seek recovery of funds from the vendor. However, if the applicant overstated its discount rate and was funded, fund repayment request will come from the applicant.

Applicants are cautioned to maintain a complete E-Rate file for all services. Records must be maintained for five years after the last day of service.

Fifth Report and Order – August, 2004

At the height of Congressional hearings and press reports of widespread waste, fraud and abuse of the E-Rate program, the FCC issued the Fifth Report and Order. This Order detailed a number of reforms designed to curb program abuse. The Order also gave specific guidance on exactly what records applicants are expected to maintain and under what conditions funding would be recovered. This Order also provided additional insight for expectations of Form 470 filings.

Commitment Adjustments (COMAD): They can take money back from APPLICANTS and service providers. Reasons for fund recovery:

- Competitive Bidding Violations
- Lack of Necessary Recourses (post commitment Item 25 Audit)
- Improper Service Substitution
- Failure to pay Non-Discounted Share
- Duplicate Services
- Failure to Complete Service Within Funding Year (vendors)
- Discount Calculation Violation
- Services not Provided for Full Year
- Waste, Fraud, or Abuse

Competitive bidding requirements: If a contract is signed prior to the 28 day Form 470 posting period or if the applicant did not consider price as the “primary” consideration when selecting the vendor funding would be denied or recovered. The FCC continues to maintain the mistaken belief that the Form 470 posting results in actual competitive bidding and does not require applicants to solicit additional bids. Applicants may continue to memorialize existing contracts simply by posting a Form 470 describing the services requested and using the existing contract as a bid. More often than not, the existing contract will be the only qualifying bid and can therefore be made E-Rate eligible. If required under procurement law or policy, a Request for Bid or Proposal must be issued.

For Year 2006, the SLD has informed applicants that TWO signatures are required on contracts and PURCHASE ORDERS. NOTE: Possibly overturned above.

Necessary resources certification: The FCC said that if beneficiaries were found not to have sufficient computer equipment, software, staff training, internal connections, maintenance and electrical capacity to make use of the supported services, full recovery of funds would be justified. USAC and the FCC have not provided guidance on what the standards are for evaluating this.

Service substitution: In cases where a service substitution was made without pre-approval, USAC could recover the difference between what was approved and what would have been approved if the request had been submitted. If the substitution occurred and USAC found that it would not have met the criteria for service substitutions, USAC will be instructed to recover the full amount.

Failure to pay non-discounted share: The FCC concluded that applicants should be able to demonstrate that they had paid their share of the cost of a service or product within 90 days after delivery of the service, in keeping with standard business practices. If the applicant has not paid its share by that time, it will be presumed to be in violation of this rule. Several parties have challenged this regulation at the FCC contending it is common billing practice, particularly with E-Rate, for vendors not to have even billed for service within 90 days.

Duplicative services: FCC regulations prohibit the funding of services that provide “the same functionality to the same population in the same location during the same period of time.” The Commission said it would seek recovery of the amount associated with the more expensive of the duplicative services, except where fraud was indicated. In those cases, it said, it might seek recovery of the full amount.

Failure to complete service with the funding year: The Commission said failure to complete work by the relevant deadline would warrant recovery of all funds disbursed for services delivered after the deadline. The Commission noted that parties are always free to seek an extension of this deadline in advance if they need additional time.

Discount calculation violation: When applicants fail to calculate their appropriate discount rate, the Commission said it would seek recovery of the difference between the amount it received and the amount to which it was entitled. This would involve both clerical errors as well as cases in which an applicant used a methodology that had not been approved by the FCC. The FCC said if it found an applicant had manipulated its discount rate in a deliberate attempt to defraud the government, full recovery might be appropriate. In addition, if an applicant would not have qualified for internal connections when its discount rate was adjusted, the FCC said it would seek full recovery.

Service not provided for full funding year: If a service provider billed for a full year, but service was only provided for part of the year, the FCC said it would be appropriate to recover the excess amount.

Recent COMADs

As a result of SLD Visits and Audits, a number of COMAD recommendations came before the SLD Board. Here are some excerpts from those decisions. No doubt, many of these decisions will be appealed to the FCC and will be the subject of FCC rulings in the years to come.

Baltimore City: \$2.53 Million (No Contract in place when Form 471 filed)

Based on the audit procedures performed and for the transactions tested, we conclude that the Beneficiary was not compliant with the Rules identified above for FY 2002, and we identified improper payments totaling \$2,533,007. In addition, the results of our audit procedures disclosed seven audit findings and two beneficiary-specific other matters, which are reported herein.

The Beneficiary's "Notice of Intent to Award" to AMS Systems for technology infrastructure (FRN No. 902346) was dated January 31, 2002, while the date of the FCC Form 471 application was January 17, 2002.

The Beneficiary's contract with JDL Technologies for consolidated network maintenance, management, security and hardware replacement services (FRN No. 902347) was dated May 13, 2003, while the date of the FCC Form 471 application was January 17, 2002.

Disbursed funds associated with FRN Nos. 902346 and 902347 in the amounts of \$734,578 and \$1,770,594, respectively, are subject to recovery by USAC.

American Samoa: \$2.3 Million (No approved Technology Plan)

The Beneficiary did not have a Technology Plan approved by a USAC certified Technology Plan approver for FY 2002.

Disbursed funds of \$2,355,844 for FY 2002 (i.e., total disbursed dollars for FY 2002 of \$2,474,057 less \$118,213 related to basic telephone service) are subject to recovery by USAC.

La Joya Independent School District \$500,000 (No signed Contracts and Free Service)

The Beneficiary was not able to provide contracts or other legally binding documents that were signed by both the Beneficiary and the service providers for the services and equipment provided through FRNs 827261 and 821715.

Under FRN 821715, the Beneficiary purchased approximately 20 polycom Viewstations during funding year 2002. However, the service provider, Wire One, also provided the Beneficiary 40 32" televisions and 20 video cassette recorders (VCRs) with the purchase at no additional charge.

Result: Applicant violated Free Services Advisory and must return all monies associated with these FRN.

Desert Sands Unified School District: \$107,000 (Miscalculation of NSLP Data)

As confirmed with the School Lunch staff, the NSLP data as of October 1, 2001 could include students from the prior school year, since the school lunch eligibility cut-off date for purging any duplicate student data from the prior and current school year is October 15. The Beneficiary personnel responsible for E-Rate matters were not fully aware of this NSLP data cut-off issue until the audit.

The monetary effect after recalculating the discount rates for the three FRNs is \$106,994.

Eastern Nebraska Distance Learning Consortium: \$21,000 (Failed to list entity on Block 4)

Applicant failed to include administrative buildings for Educational Service Units Number 1 and 2 on the Block 4 of the Form 471. The applicant contends that the ESUs had no eligible students and therefore failing to list them had no material effect on the discount rate.

However, the SLD responded: The applicant should review FCC Form 471 Instructions for item (10)(b), Column 1, which address how administrative buildings are reflective on FCC Form 471. Since the administrative buildings were not listed on the filed FCC Form 471, USAC should seek recovery of the funds associated with the two buildings.

San Diego County Office of Education: \$12,000 (Failed to install equipment during fund year)

E-Rate networking equipment, totaling \$13,637, purchased for use in FY 2002, was installed in June 2004, approximately one year after the end of FY 2002. The Beneficiary did not request a service delivery extension.

FCC rules allow applicants to request extensions for installation in circumstances beyond the service provider's control. The applicant failed to request an extension and USAC upholds the COMAD finding.

Other Fifth Order Requirements

FCC Registration Numbers

The SLD has posted revised guidance for compliance with the new FCC requirement that all schools, libraries, service providers, consultants, consortium leaders, and any entity that files a Form 470 or 471 obtain a registration number from the FCC (FCC RN). This requirement has been imposed quite simply to allow the FCC to enforce its regulations on all E-Rate participants, particularly fines and funding recovery.

Specific instructions are available at:

<http://www.sl.universalservice.org/whatsnew/2004/102004.asp#102104>

All Billed Entities and vendors must have at least ONE FCC RN.

Red Light Rule

If an applicant or vendor fails to pay obligations to the government, all funding associated with that vendor or applicant will be withheld. If the Red Light cannot be resolved during application review, the entire application will be rejected. **If a vendor is under Red Light, no invoices will be paid. If the APPLICANT is on Red Light, all pending applications will be denied.**

NCES Numbers

Old timers may remember E-Rate forms in Year One of the program required NCES numbers for all buildings. This notion was quickly abandoned when the SLD realized NCES numbers were not universally accepted by all eligible entities. Apparently, some parties with authority over the drafting of the forms this year thought NCES numbers would be a good idea again. Therefore, the draft Form 471 distributed during training had a box for NCES numbers for schools and the FSCS code for libraries. A list of NCES Numbers for Virginia are posted on the DOE E-Rate Web site. Schools or administrative buildings with no NCES code should leave the space blank.

Clarification of Non-Instructional Buildings

In general, all Priority One (telephone and Internet) services provided to school and library employees located in Non-Instructional buildings is eligible for funding. This would include school owned buildings, buildings leased by the school board, or county/city buildings that house school employees (with costs broken down to include only school employees in the E-Rate application).

However - If the "Non-instructional" building has even one classroom that serves eligible students, such as, but not limited to a head start program, a technical class, or a computer class, then the "Non-Instructional" building is now an "Instructional" building - or a

"school" or "library" for purpose of SLD evaluation (even though DOE does not recognize the building as a "school").

NOTE: ALL non-instructional buildings must be counted when filing the Form 470 and must be included on Block 4 of the Form 471. See COMAD above.

Calculating Discounts for Non-Instructional Buildings with Classrooms

If you are able to identify specific students who attend class in the classroom(s) of the former Non-Instructional building, you will report those numbers on the discount calculation worksheet and the building will receive the appropriate discount. For example, in the case of a head start program housed in an administrative building, it is likely that the entire building will eligible for a 90 percent discount.

Non-instructional buildings with classrooms are NOT eligible for Internal connection funding unless the equipment is necessary to provide services to other eligible buildings connected through a Wide Area Network.

If you are absolutely not able to identify specific students using the classroom(s) because of the transient nature of classroom users, you must document that fact and use the division weighted average for discounts associated with that building. In that case the building will revert to "non-instructional" status and internal connections will likely not be eligible for funding.

Technology Plan Requirements

Technology plans to be “written **before** submission of the Form 470.” If a technology plan is due to expire or revisions are needed for new services, a new plan or revisions need to be written NOW! **The plan must also cover the entire fund year for which services are being sought.**

The SLD indicated that specific services – such as a desire for centrex – must be included in technology plans. This requirement continues to be debated but is still in effect.

The SLD also reminded applicants that plans “should” not cover more than three (3) years. Many Virginia applicants have not had plans approved in the past three years. Based on previous experience with SLD, “should” really means “shall.”

Technology Plans should be updated annually with new budget information attached.

Requirements of the Form 470

Unlike previous advice that the Form 470 should be as broad as possible to encompass all types of vendors and services, The FCC Ysleta Order and the Fourth Order on

Reconsideration, the SLD now wants much more specific listings in the Form 470 and will hold applicants accountable if contracted services are not listed on the 470.

If you desire voicemail service, it must be listed in a separate line on the Form 470.

Please review specifics for filing the Form 470 in the “Introduction to the E-Rate Process” section before filing a Year 2007 Form 470.

Contracts must be Signed Before Filing a Form 471

This regulation has always been in place; however in previous years the SLD would accept letters of intent or purchase orders as contracts. **A bona-fide contract with BOTH parties signing the contract document must be in place prior to filing a Form 471. In Virginia, a purchase order will suffice, however, the SLD cautions that Purchase Orders must be signed and dated by both parties.** Letters of intent will no longer be accepted, unless specifically addressed in local procurement law. Virginia is fairly unique in that the State Procurement Act gives localities the option of developing local procurement regulations and, to a great extent, exempt from the Procurement Act (see 2.2-4343 of the Act). The Procurement Act is available at:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC020200000430000000000000>

Educational Purpose Reminder

The Second Order reduced much of the ambiguity many applicants faced when applying for discounts such as funding for administrative buildings, eliminating discount requests for bus barns, or determining who was eligible for discounted cellular telephones. Educational purpose for E-Rate includes activities that are “integral, immediate, and proximate” to the education of students or service to library patrons. The language gives the SLD further guidance that the “presumption” is that activities on school or library property are eligible. Finally, the Order stipulates that administrative buildings or other similar buildings would be included.

Virtually all telephone lines into schools and libraries will be eligible for funding! No longer will applicants need to break out ineligible lines at individual schools. Virtually all cellular telephones will also be eligible.

Applicant Choice for Discounts

The Second Order specified that the reimbursement option will now be permanent and that applicants will have the choice. The choice for discounts or reimbursement must be made by the filing of the Form 471. However, practically speaking, applicants and service providers should be clear on payment terms during service negotiations or Form 470 or RFP posting. The Form 470 includes boxes indicating applicant preference for funding.

Fourth Order on Reconsideration July 2004

The Fourth Order dramatically changed the way applicants look at funding. The FCC ruled that when the Administrator discovers funding was disbursed in error, the funds should be recovered from the party determined to have committed the error. **For the first time, APPLICANTS may be required to repay E-Rate funding discovered to have been disbursed in error – up to five years after funds were disbursed! Applicants should take note of Commitment Adjustment advice below.**

Third Order on Reconsideration December, 2003

Twice every Five Year Rule

The FCC ruled that an applicant can be funded for internal connections only twice every five years. Maintenance on internal connections is excluded from this limitation; however, the FCC placed harsh restrictions on Program Integrity Assurance (PIA) evaluation of maintenance contracts, explained later. The twice-every-five-year rule applies to individual applicants as well as consortia. If an applicant receives funding for internal connections through a consortium as a “shared” service even if the applicant did not take possession of the equipment shared by the consortium, the funding would count as one year of the two-in-five. If the internal connection was delivered as a “site specific” service, only the building taking delivery of the internal connection would be subject to the two-in-five rule – as part of a consortium.

The first year of the Two-in-Five rule was Funding Year 2005. ALL applicants are eligible for Internal Connection funding in Year 2006 because this is the second year of eligibility.

Internal Connection Maintenance

Maintenance on internal connections is eligible for funding and is exempt from the two-in-five-year rule. However, any contract for maintenance must be limited to ONLY maintenance of E-Rate eligible equipment. If PIA discovers the slightest bit of ineligible maintenance, the entire application will be denied. Great care must be taken to ensure that only E-Rate eligible equipment is covered in an internal connection maintenance contract.

Transfer of Equipment

Equipment purchased with E-Rate funds may not be moved from its installed location within three years of purchase. The only exception is if the school or library is closed. After three years, equipment may be transferred to any eligible entity but may not be sold or exchanged for anything of value. For the purpose of E-Rate, the FCC presumes the value of E-Rate funded equipment will depreciate on a three-year straight line schedule. Applicants are permitted to exchange E-Rate funded equipment for vendor credit on new E-Rate purchases, however the credit amount must be used to offset the cost basis of the new equipment.

II. Introduction to The E-Rate Process

Getting Ready to Apply

Success with the E-Rate program requires considerable time and effort by applicants. Planning an overall E-Rate strategy will help minimize problems and maximize discounts. Building an effective E-Rate team will help ensure all eligible services are included, forms are filled out properly and deadlines are met. The team should include individuals from the business office, technology department, procurement, and maintenance.

***E-Rate Tip:* The technology plan is in some respects the most important aspect of the program. Applicants requesting unconventional services or requesting more money than the Schools and Libraries Division thinks necessary will have applications scrutinized through an “Item 25” review. If the applicants’ technology plan does not support the requested service or large funding request, the likelihood of funding denial is greatly increased.**

Applicants should assess their present communication infrastructure and plan for future needs. Technology planning is a requirement of the E-Rate program, which is discussed in detail in later sections. Other individuals also will be impacted by E-Rate in the planning process. Business office managers, building administrators, technology leaders, and procurement officials should be included in discussions. E-Rate planning should encompass much more than just hardware, software, and training. E-Rate coordinators should know how telecommunications bills are paid and by whom, how many students are eligible for free and reduced-priced lunches, which ineligible entities share discounted services, and whether vendors will participate in the program.

Technology Plans

Each recipient of discounted services – beyond basic telephone service – must develop a technology plan that must be approved by an authority designated by the SLD, usually the state department of education or state library. Applicants may submit plans directly to the SLD for approval. Plans must be approved and an approval letter in hand BEFORE services begin.

The following criteria have been adopted by the SLD for approval of technology plans:

- (1) The plan must establish clear goals and a realistic strategy for using telecommunications and information technology to improve education or library services;
- (2) The plan must have a professional development strategy to ensure that staff know how to use these new technologies to improve education or library services;

- (3) The plan must include an assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services;
- (4) The plan must provide for a sufficient budget to acquire and maintain the hardware, software, professional development, and other services that will be needed to implement the strategy; and
- (5) The plan must include an evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.

E-Rate Tip: Technology plans must be limited to three years, with few exceptions. Technology plans for many applicants are now expiring. Technology plans must be WRITTEN AND DATED prior to submission of a Form 470.

All Virginia public school divisions' technology plans have been approved. Individual public and private schools may send plans Julie Mersiowsky at the Virginia Department of Education for approval. Technology plans must be approved before service begins.

If an applicant is subject to an Item 25 review (Item 25 of the form 471 certification indicating applicant has all necessary facilities and training to make effective use of E-Rate discounts), the technology plan will be scrutinized by PIA. If the technology plan does not support the E-Rate funding request or there is inadequate or insufficient staff development, the application will be denied. The SLD refuses to divulge what would constitute adequate resources or what level of staff development would be sufficient for a given application.

If an applicant is subject to an audit by the SLD or FCC, the technology plan must correspond with funded services and the approval date must precede the service start date.

E-Rate Tip: Make sure technology plans cover ALL requested services and include sufficient provisions for staff development, equipment maintenance, and support.

Technology Plans must be written prior to filing the Form 470 and must cover the entire fund year. During training for 2007, the SLD insists the draft technology plan include a creation date. Plans for public schools are valid for SIX years. Private schools and libraries are valid for THREE years.

Establish Needs Assessment/Procurement Schedule

Once a technology plan has been developed and E-Rate eligible needs have been established, work with the procurement department to coordinate which services will

require a RFP and which services can be procured with phone bids or purchased directly off state, regional, or GSA contracts. **The E-Rate program and Form 470 posting is not a substitute for procurement compliance with state or local procurement laws or policies.**

If a RFP is required, coordinate a Form 470 filing with the issuance of the RFP. The RFP must be available for at least 28 days after the corresponding Form 470 has been posted before bidding can be closed, even if a shorter period is allowed under local procurement policies.

RFPs for E-Rate eligible services should specify bidders will be required to participate in the E-Rate program, comply with all E-Rate regulations and, if desired, the vendor will provide discounted bills.

File Form 470 (Who you are and what you want)

The Form 470 is a procurement vehicle for E-Rate. A Form 470 should be filed whenever a procurement for E-Rate eligible services is initiated throughout the year. A general “cover all” form 470 should be posted during the E-Rate filing season (October through December) to cover E-Rate service in general or to make existing contracts E-Rate eligible (see Memorializing Contracts).

When the E-Rate coordinator has a good concept of the program and needs of the applicant, a form 470 should be filed. The form 470 provides potential vendors with information about E-Rate applicants. Information provided on the form 470 is posted on the SLD Web site (<http://www.universalservice.org/sl>) and allows vendors to contact E-Rate applicants with offers of service. Applicants may list RFPs for which they desire services, or list general services.

***E-Rate Tip:* It is highly recommended that, in the absence of an RFP, the services requested on the form 470 be as specific as possible. All categories of service should be included in the request. For Funding Year 2007, ALL Forms 470 should check requests for Telecommunications Services AND Internet Access (Items 8 and 9) because of new requirements listed on the proposed Eligible Services List.**

File the form 470 online. This will eliminate the possibility of automatic rejection. It also results in immediate posting of the form.

It is recommended that several specific items be checked when filing a form 470:

Block 2, Item 7:

Check all boxes (a, b, c, and sub category boxes in b). This gives a broad range of service choices.

Block 2, Items 8, 9, 10, and 11:

Check each item. This gives you more choices when selecting a vendor. If there is no RFP for services, also check box (b) and be as thorough as possible when listing requested services. **If you have an RFP, you must still list requested services on the form. Items 8 and 9 MUST be checked by ALL applicants to avoid funding denial.**

Check the appropriate indicator for box c. The choices are: provide discounts on bills, do not provide discounts and the applicant will request reimbursement, or no preference.

Block 2, Item 13 a and b:

If you have additional restrictions for vendors, list them in (a).

IMPORTANT: if you are seeking a contract for multiple years and/or want a contract with a renewal option, you MUST detail that in 13 (b). For example, if you are seeking a multi-year contract for WAN service, you must specify the time period you are seeking a contract - two years, five years, with three optional one-year renewals, etc.

Block 3, Item 14:

NEVER CHECK THIS BOX. If you desire only basic telephone service, you can certify that no technology plan is needed on the form 471. If checked, this box will limit the 470 to basic telephone services only and will lead to denial of all other services. Never check this box.

Block 4, Item 16:

Include all buildings that are eligible for service - schools, administrative buildings, bus barns, tech centers, field houses, bookmobiles, etc.

Block 4, Item 18:

List all ineligible entities that will participate in the contract - or COULD participate in the contract - such as the county government, community college, or industrial park.

Block 5, Item 20:

NEVER CHECK ITEM (C). Since Block 3, Item 14 was not checked, this box cannot be checked. Again, if you only apply for local and long distance (basic telephone) service, there is a designation for that on the form 471. Do not limit choices on the form 470!

Block 5, Item 27

Sign in ink and date the page or certify online.

The form 470 must be posted on the SLD Web site for at least 28 days before a contract may be signed by the applicant or service provider selected. If you issue a RFP and have a pre-bid meeting, the meeting should be OPTIONAL to keep the 28 day posting period intact.

***E-Rate Tip:* SLD officials report that two percent of funding requests are denied for violation of the 28-day rule. Applicants should review their applications posted on the SLD Web site in the Vendor area to confirm posting and allowable contract date. Do not sign a contract, file a form 471, or sign a form 471 certification page prior to the 28 day posting requirement.**

Applicants need only file one form 470 for multi-year contracts. Applicants that sign contracts resulting from properly posted form 470s may cite that form 470 in subsequent years when filing for discounts.

***E-Rate Tip:* Because tariffed and month-to-month services are not considered “contracts,” a new form 470 must be filed annually for these services. Tariffs under state law cover a wide variety of services. Tariffs are governed by the State Corporation Commission and are available at: <http://www.state.va.us/scc/division/puc/tarifflog/tariff.htm> The Commission telephone number is: 800-552-7945. In the absence of a contract, work with your service provider to obtain tariff services.**

The SLD has issued a note of caution when filing the form 470. It will reject applications filed or signed by vendors. The contact name listed on the 470 must represent the contract negotiator, not the vendor. The 470 should reflect services applicants desire and reflected in technology plans. Applicants must review vendor submissions and determine which vendor is best suited to provide services. Local or state governments may file form 470 on behalf of schools and libraries in their states.

***E-Rate Tip:* E –Rate consultants may assist with filing the form 470 and may even be listed as the contact person, however the consultant must not be associated with a vendor bidding on E-Rate eligible services, and must have written authorization from the applicant to be the form 470 contact. Vendors may absolutely NOT be listed as contact on the Form 470. Applicants MUST have a letter of agreement or agency signed with a consultant prior to the consultant starting work for the applicant.**

The Form 470 in its current state can also be used to effectively thwart competition. This fact has been pointed out to the FCC numerous times but the Commission has not addressed the issue. This oversight is not an invitation to circumvent state or local procurement regulations. However, in some instances E-Rate regulations run counter to the practical requirements of local procurement regulations.

For example, the locality may have bid a contract for Internet access for the local government without consulting the school division (and without filing a Form 470). The locality expects the school division to participate in the contract. To make the contract eligible for E-Rate, a Form 470 must be filed and 28 days pass before a decision to accept the contract can be made.

By filing a Form 470 requesting only “Internet Access” (Item 9, B), and checking Item 7 B for 470 description, the pool of service providers has effectively been limited to an ISP that can service the locality and school division. Such Form 470 postings rarely result in a responsive bid. After the 28 day posting period, evaluate any bids received with the existing contract. If the existing contract is the most cost effective (with price being the primary consideration), memorialize the contract with a memo to the E-Rate file signing on to the existing contract.

The same method can be used to procure goods and services off the General Services Administration schedules, which are allowed under the Virginia Procurement Act.

Evaluate Bid Responses

In addition to a requirement that vendors be given at least 28 days to respond to applicant needs, the other major program intrusion into local procurement regulations is a requirement that price must be the primary consideration when evaluating bid responses. There could be numerous criteria for bid evaluation but price must have the highest weight. There is an appeal before the FCC where price was weighted equally with other criteria. The SLD denied funding and the applicant appealed.

E-Rate Tip: Price must be the primary consideration when evaluating E-Rate eligible contracts. The SLD has indicated that E-Rate eligible services must be used when evaluating bids. For example, if a cellular vendor offers the lowest cost service but the applicant must purchase new phones (ineligible), only the cost of service may be used for evaluation.

Sign Contract(s)

After the 28-day posting period has passed and local and state procurement laws have been met, a contract may be signed with the winning bidder or bidders. It is advisable to include the E-rate funding contingency clauses, in addition to local funding clauses in such contracts. A clause in the contract requiring the winning bidder to participate in the E-Rate program is also advisable.

E-Rate Tip: The FCC requires contracts to be signed AND dated by both parties. The SLD has expanded this interpretation to include Purchase Orders. CAUTION: The dates must be AFTER the 28 day posting period for Forms 470 and BEFORE the Form 471 is signed. According to the SLD, Purchase Orders must also be signed by both parties for 2007. The two date, two signature issue is now before the FCC.

Tariffed telecommunications services and month-to-month Internet or cellular phone services do not require signed, binding contracts, but applicants will need copies of bills, work orders or other documentation to verify that the applicant is receiving or will receive service.

Applicants are strongly advised to consult the Schools and Libraries Eligibility List before signing contracts for E-Rate discounts. This list was released in draft form in September 2006. The draft version is available on the Schools and Libraries Web site. The SLD has also included additional guidance in the form of the “Eligible Services Framework” which is a broad overview describing the philosophy of eligible service determination. The Eligible Services Framework document is available at: http://www.sl.universalservice.org/reference/eligserv_framework.asp Applicants are cautioned to avoid using phrases or words that could put discount funding at risk.

E-Rate Tip: If there is ANY question about whether a service is eligible or not, break it out on a single form 471, Block 5. If requesting service for On-Premise equipment provided by a telecommunications service provider, watch out for the “67 percent” rule in the Maximizing Discounts section of this handbook.

The SLD has provided the following contract guidance on its website:

Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, an E-rate applicant must sign a contract with the service provider before signing and submitting a completed (certified) Form 471. Applicants must also comply with state contract law. Applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471, section FCC 54.504c.

Memorializing State Contracts or GSA Contracts

State procurement law allows the use of GSA contracts. By using either state master contracts or GSA contracts, in many cases purchasing can be simplified and RFPs can be avoided.

The GSA website is located at: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

The Virginia Information Technologies Agency is located at:

<http://www.vita.virginia.gov/>

In most cases, state and GSA contracts have not been made E-Rate eligible with the filing of a Form 470. By filing a Form 470 listing the desired services covered by the state or GSA contract, the contract may be used as a response to the Form 470 posting. After 28 days, if the state or GSA contract is the most cost effective response, the contract may be used for E-Rate eligible service. A MEMO to the E-Rate file is required when selecting the state contract. The date of the memo will be the “contract award date” for E-Rate filing purposes.

Before selecting a state or GSA contract for your E-Rate eligible purchase, make sure the contract expiration date is either well into the fund year (after July 1, 2008) or covers the entire fund year. To use these contracts the applicant would typically file a 470 describing the services desired. After 28 days use one of the master contracts as a “bid,” or simply procure services under the contract, in accordance with local procurement regulations.

If the procurement requires school, library, or governing board approval, allow sufficient time to bring the contract before the board before the Filing window expires.

FORM 471

Filing Window for Year 10 is will be early December 2006 through early February 2007. ALL Forms 471 must be filed within the Window.

File Form 471 (How much do you want and for what services)

The entity that actually pays the bills to the service provider should file this form. In most instances it will be the school division or library system; however, in some cases, a city or county will pay bills on behalf of the school system. In this case the CITY or COUNTY government should file the 471.

IMPORTANT: File one Form 471 for Telecommunications Services or Internet Access and a SEPARATE Form 471 for Internal Connections or Maintenance. If combined, a funding commitment for Telecommunication or Internet service will be delayed.

With dual signed and dated contracts for all services, except Tariff or Month-to-Month, a form 471 may be submitted during the E-Rate filing window. The entity that will pay the vendor, whether it is the applicant, county or city government, or state should submit form 471. For example, if the city pays the telephone bill for the schools, the city will submit form 471. The fiscal agent in a consortium would submit the form. Applicants must also calculate their discount rate on form 471.

***E-Rate Tip:* File the Form 471 online. This will eliminate the possibility of rejection.**

***E-Rate Tip:* For Year 2007, ALL buildings must have entity numbers. If you have not applied for entity numbers for every building, do so before starting the Form 471 process. Call the SLD to obtain an entity number at: (888) 203-8100.**

How to File the Form 471

Block 1: When filing online, information will be pre-populated based on the Billed Entity Number entered in Item 3. If this information is incorrect, you must call the SLD to initiate a change (888) 203-8100.

Block 2 and 3: Please be as thorough as possible when providing this information. No applicant has been denied funding because of information provided in Block 2 but it is important information for the SLD.

Block 4: This is where you calculate discounts. For school divisions or library systems, you will need to complete a separate worksheet for each group of schools served under a single contract or provider. For example, if the school division has 15 schools and five are served by ABC Telephone and the other ten are served by Zoom Telecom, two worksheets will be completed – one for the five schools and one for the other ten. If other contracts cover the entire school division, a third worksheet must be filed for all schools and school buildings.

The form calls for BOTH Entity numbers and NCES codes for all buildings. Note the form does not require the FCC RN, but applicants are required to have at least one FCC RN number per Billed Entity. **It is important to list ALL eligible buildings in the Block 4, including Administrative buildings, bus barns, Head Start buildings, etc. All non-instructional buildings will have Entity numbers, but may not have NCES codes.**

In July 2006 the Schools and Libraries Board recommended that funding disbursed for services delivered to buildings not listed on the Block 4 should be returned. See COMAD decisions above.

Block 4, Columns 4 and 5 are for reporting total number of students and students eligible for the National School Lunch Program. In Virginia Pre-K and Juvenile Justice students are eligible for participation in E-Rate and should be included in the count. The SLD verifies the discounts with figures reported to the state and posted on the DOE web site. If your discounts do not match figures on the DOE website, you will be asked to prove your figures are accurate. Administrative buildings (without classrooms) and schools under construction should be reported as having zero students and zero students eligible for the NSLP. New schools should also report zero in Columns 4 and 5.

Block 4, Column 10 indicates if the particular entity used an alternative discount method, such as sibling match or student survey.

For large applicants, the SLD has announced it will provide instructions for uploading Block 4 information in a user-friendly format. Please watch the SLD Web site for updates.

When filing online, all discount calculations are automatically entered. For non-instructional buildings and new schools, discounts will reflect the weighted average for all schools in the Block 4 and will be calculated after all schools have been entered.

Block 5 of the Form 471 is the actual request for funding. Complete one Block 5 per contract or service. If an applicant receives local telephone service from Verizon and long distance service from Sprint, two Block 5s would be completed – one for Sprint and one for Verizon. Typically, a single 471 will have at least six Block 5's, reflecting local, long distance, cellular, Internet, WAN, and pager services.

Block 5 has a number of quirks that can generate questions from program reviewers. For most Virginia applicants, Item 10 will not be checked. This item is limited to Internal Connection funding requests that have not been funded from previous years or are under appeal. Item 11 is self explanatory but make sure you are checking the appropriate box for THIS particular Block 5.

Item 12 is the 470 application number for THIS service. If this is the second or third year of a multi-year contract, use the 470 number that initiated the contract some years ago. If the service is tariff or Month-to-Month, use THIS year's 470 – as those services must have a 470 filed each year.

Item 15c should be checked if a third party negotiated the contract. For example, the state negotiated COVANET. If you are using the COVANET contract, you should check this box.

Item 15d should be checked for continuations of multi-year contracts. Provide the FRN from last year for this contract.

Item 17 is the Allowable Contract Date from the 470 listed in Item 12. For 470s filed this year, it will be this year. For 470s filed in years past for multi-year contracts, it will be a date years ago.

Item 18 is the contract award date or the vendor selection date. **THIS DATE MUST BE AFTER THE DATE IN ITEM 17. This date must also be BEFORE the filing date of the 471 and the Block 6 certification signature date.**

Item 19 will normally be 07/01/2007

Item 20a is used for tariff or month-to-month services and is usually 06/30/2008

Item 20b is the contract expiration date for multi-year contracts. If a contract is extended in subsequent years, this will lead to additional questions by SLD.

Item 21 is the attachment used to justify THIS funding request. The attachment should be listed by number for each Block 5 and should follow guidance on the SLD Web site: <http://www.sl.universalservice.org/reference/Form471item21Attachments.asp>

Item 23 includes calculations for determining how much funding is requested under this Block 5. In some cases, recurring services include one-time installation charges. Make sure to include both recurring and one-time charges as appropriate.

Block 6 Item 25a, b, c, d, e, and f: a, b, and c will self calculate. Item 25d asks for the total budgeted amount for non-discounted E-Rate support. This should be a large figure, but not too large. If it is too small, it will result in funding denial. This figure should include salaries for ALL technical personnel, salaries for instructional technology people, contractors, computer upgrades, software purchases, staff training, electrical upgrades, and anything else that is an expense related to E-Rate eligible services.

NEVER CHECK ITEM 25f. This will result in funding denial.

E-Rate Tip: Include certifications and attachments for a **SINGLE** form 471 in each envelope. Do **NOT** file form 470 certifications in an envelope with form 471 certifications. Document mailing and keep information in your E-Rate file. The SLD contractor has a history of losing more than one application in an envelope.

E-Rate Tip: All applicants who have **SIGNED** either Forms 470, 471, or 486 will receive a **Personal Identification Number (PIN)** in the mail. These PINs have been activated and can be used to certify all Year 2007 forms. The PINs can only be used by the person they are assigned to.

Receive Receipt Acknowledgment Letter (RAL) from SLD

Form 471 applications filed within the filing window are delivered to Lawrence, Kansas, for the data entry process. Applications filed online pass through this process rather quickly, because most of the data entry work was accomplished automatically. Manually filed applications can take months to process. After an application has been data entered, SLD will issue a Receipt Acknowledgment Letter (RAL) to the applicant. This letter contains all application and funding information in the SLD database. Applicants must carefully review the RAL for accuracy. If there is a mistake on the RAL, a line should be drawn through the mistake and the accurate information should be written on the page and mailed to Lawrence, Kansas. A copy of the corrected RAL should also be kept by the applicant for documentation.

E-Rate Tip: Applicants have only three weeks from receipt of the RAL to make corrections or changes and submit them to Kansas.

The RAL correction process can be used to correct mistakes of the data entry process, to correct an incorrect SPIN, to REDUCE funding request, or to break out multiple service providers mistakenly listed on a single FRN. Vendor, service changes, or increased funding requests are not allowed in this process.

Respond to inquiries from Program Integrity Assurance (PIA)

Once data entry is complete applications, where they undergo Program Integrity Assurance (PIA) review in Whippany, New Jersey. This is a high-level review of all applications for compliance with program rules. Item 21 attachments justifying E-Rate discounts for each Block 5 must be delivered to PIA during review, typically January through October.

PIA reviewers are employees of a company called SOLIX which was spun off from the National Exchange Carrier Association (NECA), which has a contract from USAC to administer the program. Historically, NECA administered the Universal Service fund for telephone companies, which was established after the breakup of AT&T. The E-Rate program is a new aspect of Universal Service.

Reviewers at PIA scrutinize all applications and contact applicants when questions arise. Common questions include how applicants determined discount rates, what goods and services are included in contracts, and whether requested discounts are for eligible items.

The SLD is concerned that vendors and applicants, particularly at the 90 percent level may be attempting to commit fraud or waste program resources. If SLD suspects fraud or abuse, those applications receive extra scrutiny and funding may be denied. Unfortunately, additional scrutiny of all applications means some legitimate funding requests are also denied. It is better to work with PIA during the review process and avoid denial.

Once denied funding, the only recourse for applicants is to appeal, to either to the FCC or SLD within 60 days of the POSTMARK of the SLD letter of denial. Currently, the backlog of appeals at the SLD is approximately two months. The backlog at the FCC is over 18 months!

E-Rate Tip: Because E-Rate rules and policies constantly change, the Department of Education advises applicants to appeal all funding denials.

Because of the increase in fraud and abuse in the E-Rate program, SLD classifies some applications as “high risk” applications. According to the SLD, criteria that determine when an application is high risk include the size of the request, evidence from external sources of possible program compliance issues, and indications that a school has an endowment of more than \$50 million. About 1.5 percent of applications in a given year, representing about 50 percent of dollars requested, are considered high risk.

Item 25 Review

An “Item 25” review is named after the Item 25 certification on the form 471, where applicants certify they have all necessary facilities and training to make effective use of E-Rate discounts. It is important to respond to PIA requests as soon as possible. When applicants fail to respond to PIA requests, funding applications will be denied. Information requested in an Item 25 review is extensive, requiring many hours to gather

information and provide it to PIA. In many respects, an Item 25 review is similar to an audit.

***E-Rate Tip:* Provide PIA with only information specifically requested. Ensure information is accurate and complies with program rules. If asked to submit technology plan, review plan to ensure it reflects services ordered and includes adequate staff development. Revise technology plan if necessary prior to submission. Technology plans do not need to be approved at this point in the process, but must exist. Four percent of funding request are denied because of failure to adequately document Item 25 requests.**

Receive Funding Commitment Decision Letter from SLD

After the PIA has successfully completed its review of funding requests, a Funding Commitment Decision Letter (FCDL) is issued to the applicant. The FCDL is similar to the RAL, discussed earlier, except that it includes a commitment (or denial) of funds to applicants. The FCDL will also contain instructions on how to obtain discounts and how to appeal decisions.

Funding commitments are made on the basis of each form 471, and one decision for each Block 5 submitted. If an applicant submitted two form 471s with 15 Block 5s on one and 10 on the other, then the applicant will receive two FCDL's (one for each form 471), with 15 and 10 commitments, respectively.

Funding commitments take the following forms:

- Funding in full,
- Partial funding with reasons listed by SLD, or
- Denial of funding with reasons listed by SLD

If the FCDL does not fully fund service requests, applicants are urged to appeal.

File form 486

After receiving a full or partially funded FCDL and service has started, applicants may file form 486. Form 486 notifies the SLD that service has begun or is about to begin and that the SLD may pay the vendor for invoices or for BEAR forms (form 472) submitted by the applicant. SLD allows early filing of form 486. In cases where the applicant is sure service will begin on or near July 1 of the funding year, form 486 may be submitted after a commitment letter is received prior to July 1.

***E-Rate Tip:* For most applicants, a form 486 must be filed within 120 days of the start of service, usually October 28 of each funding year. However, if a Commitment Letter is issued AFTER July of the fund year, the deadline for filing the Form 486 is 120 days from the DATE of the Commitment Letter. Funding will be reduced by one day for each day the 486 is late. Online filing of the 486 is now available.**

The form 486 is also used for applicants to comply with CIPA regulations. Applicants must certify on the form 486 that they are 1) in compliance with CIPA, 2) are undertaking actions toward compliance, or 3) do not need to comply because discounts are received only on telecommunications services. Generally, all applicants must now certify that they are in compliance with CIPA or are receiving only telecommunications service.

Because Billed Entities are required to submit the form 486 and the Billed Entity may represent a number of applicants (consortia for example), all Billed Entities representing more than one Administrative Authority (see definition in CIPA section) must collect Form 479 from each Administrative Authority listed on their form 471, when funded for Internet access or Internal connections. Telecommunications services are exempt from CIPA compliance, therefore, Billed Entities of multiple Administrative Authorities need not collect form 479s when applying only for telecommunications services.

One confusing twist in the CIPA certification process is a requirement for the Billed Entity of multiple Administrative Authorities to collect Form 479s from ALL Administrative Authorities if only a SINGLE member of the consortium receives either Internet access or internal connections. This is a requirement now but may not stand the FCC appeal test down the road.

Form 479

The form 479 is relatively simple and straightforward. Its only purpose is for Administrative Authorities to certify to their Billed Entities that they are in compliance with CIPA or are taking steps toward compliance. Administrative Authorities must send the form 479 to the Billed Entity.

According to form 479 instructions, "...the Administrative Authority may be the school, school district, school board, local education agency, or other authority with responsibility for administration of the school." There is no further guidance on Administrative Authority.

The form 479 must be submitted to the Billed Entity PRIOR to the Billed Entity filing the form 486 (remember the October 28 deadline).

File form 500 (if needed)

The FCC form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, serves certain functions formerly served by form 486, with one new function provided. These functions are:

- 1.To change a previously reported service start date;
- 2.To change a previously reported contract expiration date;
- 3.To cancel irrevocably an FRN;
- 4.To reduce the amount of a previously committed FRN

E-Rate Tip: A Form 500 can be filed to CANCEL Internal Connections Funding and reset the timing clock for the Two-in-Five rule for Internal Connections.

File form 472 only if receiving retroactive discounts

The Form 472 (Billed Entity Applicant Reimbursement or BEAR) should be filed by applicants that have paid bills in full for E-Rate eligible items and will be receiving retroactive discounts.

BEAR forms should be submitted after bills have been paid and on a quarterly, semi-annual, or annual basis. Once SLD has received and verified the BEAR form, it will issue a check for the requested amount to the vendor. The vendor is required to issue a check to the applicant within 20 business days of receipt of the SLD check. When using the BEAR process applicants should consider payment timing issues. If an applicant submits a single BEAR form at the end of the funding year (after the June bill has arrived in most cases), SLD will issue a check for the total yearly discount. The applicant will receive payment in August or September of the fiscal year *following* the year in which discounts occurred. However, quarterly BEAR submissions will result in only three months of funds being shifted between fiscal years.

E-Rate Tip: The deadline for filing the last Form 472 is 120 days after the last day of service, typically October 28 of the year service is received. If this deadline is missed, all remaining funding will be lost! Each year of the E-Rate program, approximately 20 percent of committed funding goes uncollected. If vendors cannot provide accurate bills by the deadline, file an extension request with the SLD.

Children's Internet Protection Act (CIPA)

It is widely known that the Internet, in addition to the wonderful educational, entertainment, commercial, and research value, has a much seedier side. Pornographic and other sites inappropriate for children have proliferated on the Web. There is evidence that pornographers are targeting children.

In December 2000, Congress passed the Children's Internet Protection Act (CIPA) requiring some recipients of certain federal funds to protect children from pornographic, inappropriate or child pornographic Internet sites.

For E-Rate, the Federal Communications Commission established new regulations for CIPA compliance. The FCC determined that applicants must devise an Internet safety policy that included a public hearing. The policy must address the following issues:

- access by minors to inappropriate matter on the Internet and World wide web;
- the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

- unauthorized access, including so-called “hacking,” and other unlawful activities by minors online;
- unauthorized disclosure, use, and dissemination of personal information regarding minors; and
- measures designed to restrict minors’ access to materials harmful to minors.

The regulations are clear that the level of compliance with CIPA is left entirely to local authorities. Part of the reason is a local control issue, and part is because the FCC recognizes that very few (if any) Internet filters are 100 percent effective and it would be futile to dictate which filters applicants should use. Indeed, contained within the CIPA legislation is a provision that the FCC should evaluate different filters and report on their effectiveness.

Virginia has an Internet safety law in place. Virginia schools must now have filters in place to keep students from accessing pornographic Web sites and other sites deemed harmful to children. More information on CIPA and the Virginia law is available at:

<http://www.pen.k12.va.us/VDOE/Technology/filtering.html>

III. Issues and Answers

Appeals

In Year Two of the E-Rate program, a year in which sufficient funds were available to fund all applications for all services, 10 percent of funding requests were denied. According to the SLD, the Year Three denial rate exceeded 25 percent, and the rate for Year Four and beyond was about 20 percent. When an applicant is dissatisfied with a decision by SLD, the applicant may appeal. Applicants may appeal to either the SLD or the Federal Communications Commission. Obvious mistakes by SLD can be appealed to SLD or the FCC, but appeals pertaining to policy issues should be addressed to the FCC. Applicants should not appeal to both the SLD and FCC simultaneously.

The FCC has rendered decisions on approximately 800 appeals since the program began. Those decisions are available at: http://www.fcc.gov/wcb/tapd/universal_service/appeals.html. Many appeals are pending at the FCC creating a significant backlog. Currently, a properly filed appeal may take over 18 months for the Commission to consider.

E-Rate Tip: Do not count on a rapid decision for appeals filed with the FCC. The appeal backlog at the FCC is approaching two years.

Appeals must be postmarked within 60 days of the issuance (date on the letter) of the funding decision. We highly recommend that appeals be written immediately upon receipt of a denial and that they be delivered via overnight mail, email or fax.

Because SLD and FCC E-Rate policies are constantly being reviewed and are subject to change, we highly recommend that all funding adjustments and denials be appealed.

Appeals to SLD should be in the form of a letter and should contain all vital information in the heading such as the name of the applicant, address, phone number, contact name, entity number, 471 application number, and funding request number. Appeals to the SLD should be sent to:

Letter of Appeal
Schools and Libraries Division
Box 125-Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Appeals may also be submitted via FAX or email. Appeals filed by e-mail must be submitted to appeals@sl.universalservice.org. Documents filed by e-mail can be submitted in any widely used word processing format, such as Adobe Portable Document Format (PDF), Word or WordPerfect. The SLD will automatically reply to incoming e-mails to confirm receipt. This e-mail address can only be used for appeals.

Appeals filed by facsimile must be faxed to **973-599-6542**.

The appeal should contain any relevant documentation and a cover letter explaining your case. A copy of appeals sent to a congressman or senator may help speed the process, if not the outcome.

E-Rate Tip: If appeals to the SLD are not successful, applicants should appeal to the FCC. The 60 day rule also applies to appeals submitted to the FCC.

Appeals to the FCC are supposed to be somewhat more formal; however, the commission routinely considers appeals that are filed without the proper format. Appeals to the FCC should look like this:

Before the Federal Communications Commission
Washington, DC

In the Matter of:

Request for Review by (Name of Applicant) of)	
Decision of the Universal Service Administrator)	
)	
Federal Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	
National Exchange Carrier Association)	CC Docket No. 97-21

Request for review submitted by (Name of Applicant), entity number _____, form 471 number _____, Funding Request number(s)_____, address, and phone number.

(Body of Appeal, citing FCC regulations whenever possible)

A request for review pursuant to 54.719(a)-(c) shall contain: (i) a statement setting forth the party's interest in the matter presented for review; (ii) a full statement of relevant, material facts with supporting affidavits and documentation; (iii) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (iv) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

Respectfully Submitted this (date),

(Name of Applicant)

Appeals can be delivered to the FCC in the following ways:

For items sent via United States Postal Services, including first-class mail, Express Mail, and Priority Mail, use the following address:

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

For items sent via other express delivery services, use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m. ET)

Appeals may also be filed electronically through the FCC's Electronic Filing system located at: <http://www.fcc.gov/e-file/ecfs.html>

To be considered properly filed, all appeals *mailed* to the Commission should include an original (with original signature and marked "original") and four copies, although the FCC has considered and approved appeals where only the original was submitted. A copy also must be sent to the SLD at the Whippany, NJ address.

Hysham Public Schools, Montana filed an appeal with the FCC in August 2000. This is an excellent example of a properly filed appeal, with supporting documentation. The appeal was also filed within the 60-day deadline. Hysham's appeal is available on the FCC Web site as a PDF file at:

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6511557893

Hysham's appeal remained at the FCC for more than one year and a ruling was finally issued in late August 2001. The FCC found that SLD should have granted Hysham's request and sent the application back to SLD.

Service Provider Changes

Service Provider Changes, also known as SPIN changes are allowed for a wide variety of reasons because of an FCC decision known as the COPAN decision. SPIN changes are allowed under the following conditions:

- The SPIN change is allowed under its state and local procurement rules,
- the SPIN change is allowable under the terms of the contract between the applicant and its original service provider, and
- the applicant has notified its original service provider of its intent to change service providers.

SPIN changes can occur for almost any reason including vendors that have gone out of business or breach contracts. Note that applicants may not request more E-Rate funding when changing service providers.

In order to change service providers applicants must send a letter to the SLD with the following information:

Your Form 471 Application Number, your Billed Entity Number, the Funding Request Number (FRN) for which you are requesting the change, the original Service Provider name and SPIN, the Service Provider Name and SPIN to which you wish to change, the proposed effective date of the SPIN change (if the service provider has already been changed, this date would be in the past), a certification by the applicant that its SPIN change request satisfies the requirements of the Copan decision, complete contact information so our SPIN team can reach you easily, an original signature to affirm the certifications, and printed name and title of certifying person.

Send this letter to: SPIN Change Request, Schools and Libraries Division, Box 125 – Correspondence Unit, 80 S. Jefferson Road, Whippany, NJ 07981.

SPIN Corrections (Also known as Corrective SPIN Changes)

If a service provider has merged with another company, or there was simply an error with the SPIN, applicants may apply for a SPIN Correction either before or after a funding commitment. There is no time limit for filing a SPIN correction, except that a SPIN correction cannot be submitted after a funding deadline.

Fax requests to (973) 599-6526, or by regular mail to:

SPIN Corrections
Schools and Libraries Division
Box 125 - Correspondence Unit
80 S. Jefferson Road
Whippany, NJ 07981

Consortium Applications

Consortia are made up of groups of E-Rate eligible applicants from different political subdivisions. For example, several school divisions may enter into a cooperative agreement to purchase broadband service at reduced cost. Such arrangements are allowed under E-Rate rules but consortia must secure and maintain additional documentation for program compliance.

The consortium lead, the entity that pays invoices on behalf of consortium members, will file all E-Rate paperwork including Forms 470, 471, 486, and 472 if applicable. The consortia lead is required to collect Letters of Agency from all members prior to filing

the Form 471. The Letter of Agency must contain certain language prescribed by the Schools and Libraries Division:

CONSORTIUM MEMBER'S LETTERHEAD

Addressed To Consortium

Re: Letter of Agency For Funding Year 200_ - 200_

This is to confirm our participation in the **[name of Consortium]** E-rate Consortium for the procurement of **[List Services]**. I hereby authorize **[name of Consortium]** to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Libraries Division of the Universal Service Administrative Company on behalf of the **[Insert Entity Name]**.

I understand that, in submitting these forms on our behalf, you are making certifications for **[Insert Entity Name]**. By signing this Letter of Agency, I make the following certifications:

- (a) **[USE FOR SCHOOL RELATED LOA]** I certify that **[our school, schools in our district]** are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.

[USE FOR LIBRARY RELATED LOA] I certify that **[our library, libraries in our system]** are eligible for assistance from a State Library Administrative Agency under the Library Services and Technology Act of 1996, Pub. L. No. 104-208, § 211 et seq., 110 Stat. 3009 (1996) that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary, secondary schools, colleges, or universities).

- (b) I certify that our **[Insert Type of Entity (e.g. school, school district(s), library(ies))]** has/have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our **[Insert Type of Entity (e.g. school, school district(s), library(ies))]** is/are covered by a technology plan(s) that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s): ____ an individual technology plan for using the services requested in this application; and/or ____ higher-level technology plan(s) for using the services requested in this application; or ____ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.

- (d) I certify that the services the school, library or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).
- (e) I certify that our **[Insert Type of Entity (e.g. school, school district(s), library(ies))]** has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (j) I certify, on behalf of the entities covered by this Letter of Agency, that any funding requests for internal connections services, except basic maintenance services, applied

for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).

- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to [name of Consortium] for E-rate submission is true.

In addition, the Consortium lead must collect Forms 479 from every member when filing for Internet access or Internal Connections. Considering the new interpretations of what constitutes Internet Access, it is advisable to secure Forms 479 from all members when only applying for telecommunications services.

Consultants

Many applicants have elected to hire consulting services to assist with the E-Rate process. Like tax preparation consultants, E-Rate consultants can be good or bad. The Department of Education does not recommend one consultant over another but caution Virginia applicants to carefully research a consultants background and thoroughly understand what services the consultant will render before engaging a consulting service. Consultants must obtain a FCC Registration Number and provide it to potential clients.

Before a consultant can work on behalf of an applicant with the Schools and Libraries Division, a Letter of Agreement between the applicant and consultant must be in place.

IV. Maximizing E-Rate Discounts for 2007-2008

Some of the following suggestions take into consideration the fact that internal connection applications are typically funded below about 87 percent. This figure may change as the Two-in-five rule takes hold or high-discount applicants do not request huge sums of money.

Here are a few suggestions:

- Sign separate internal wiring contracts for highest discount schools. Funding for telecommunications services and Internet access takes priority. Any remaining money will go toward funding internal connections. The highest discount applicants will be funded first for internal connections. Although all successful applications were funded during year two, year three funding did not fall below 81percent. If the individual school is listed as the billed entity, rather than the school division, only the school uses one of the two-in-five year internal connection funding limits.
- Sign separate contracts for servers, routers, and other “internal connections” at your highest discount schools. If you plan a major purchase of servers and routers for your school system, specify in your bid that you want a separate contract for your 90 percent discount schools. This would increase the likelihood for funding for those items. If the individual school is listed as the billed entity, rather than the school division, only the school uses one of the two-in-five year internal connection funding limits.
- Increase your discount percentage by identifying eligible students in high and middle schools. For some reason, older students are more reluctant to participate in the National School Lunch Program. If you can identify participating siblings of non-participating students, living in the same household (typically the siblings are in elementary school), you may count them as “eligible” students. This is most effective if you need relatively few students to jump from one discount level to another. Students that receive Aid for Dependent Children benefits, food stamps, Supplemental Security Income (SSI), Medicaid, or tuition assistance also qualify for the National School Lunch Program and may be counted as eligible. Lock this information away and use it only if the SLD questions your discount or if it is needed for an audit. You may also conduct a survey of students to determine eligibility figures. A sample survey is available on the DOE E-Rate Website.
- Lease wide area network. Wide area networks are eligible for discounts when leased from a telecommunications carrier or from any vendor (such as a cable company) when the cost of the WAN is less than a telecommunications carrier for equal service. An applicant can leverage the cost of service, installation, and ongoing maintenance of a WAN. The FCC has also ruled that routers leased from ISPs may be eligible for discounts if the schools’ local area network functions with the router turned off and the router connects to another building outside the school. With the Eligible Services List issued on October 19, 2001, the SLD gave specific instructions on leased equipment that is housed within a school or library. This

equipment is now known as “On-Premise” equipment and must conform to ALL of the following guidelines to be E-Rate eligible:

Leased On-Premise Equipment Eligibility Requirements

The on-premise Priority 1 equipment must be an integral component of the telecommunications or Internet access service. Discounts for services that include charges for on-premise Priority 1 equipment are permissible when the following conditions are met:

- A. The on-premise equipment will be provided by the same service provider that provides the eligible telecommunications or Internet access service of which it is a part.
 - B. Responsibility for maintaining the equipment rests with the service provider, not the school or library.
 - C. Ownership of the equipment will not transfer to the school or library in the future, and the relevant contract or lease does not include an option to purchase the equipment by the school or library.
 - D. Upfront, capital charges of the on-premise equipment are less than 67% of total charges (recurring plus non-recurring) in the funding year.
 - E. The equipment will not be used by the school or library for any purpose other than receipt of the eligible telecommunications or Internet access service of which it is a part.
 - F. The Local Area Network of the school or library is functional without dependence on the equipment.
 - G. There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment in part for other customers.
- File early. Many applicants wait until the last minute to file forms 470 and 471 and some had their applications rejected because they failed to meet the “minimum filing requirements” established by the SLD and were unable to resubmit their application within the window. For all services that are ongoing (local and long-distance phone service, existing contracts, Internet service, wide area network contracts, etc.) file form 470 as soon as possible. File form 471 when the 28-day posting period has passed for tariff services (applicants DO NOT need a contract in place for tariff services). For “Existing Contracts” - contracts signed on or prior to June 10, 1997, or as the result of a previous form 470 posting - you may file form 471 immediately and need not file another form 470. All other 471 forms can only be filed AFTER you have a signed contract in place. Filing early will give you more time to correct any mistakes in an application that is rejected. Remember, applicants may re-submit rejected applications, but they MUST be corrected and received by the SLD before the filing window closes to receive funding.
 - Separate ineligible services from eligible ones. Several applications were rejected because applicants combined eligible and ineligible services on a single line. Take care to apply only

for eligible services at proper discount levels. Services not listed on the “eligible services list” will generally not be funded without argument (or appeal) from applicants. The SLD has established a “30 percent ineligible cutoff” as the benchmark for denying applications. If SLD determines that more than 30 percent of a funding request includes ineligible services, SLD will deny the entire amount. If in doubt of the eligibility of a service, file an individual block five!

Eligible Local Telephone Charges

Single Party Service
Dual Tone Multi Frequency signaling or equivalent
Voice grade access to the public switched network
Access to 911
Access to operator services, interexchange service, directory assistance
900/976 call blocking
Long distance
Taxes
Universal Service charges
Voice mail
911/E911 trunk lines
Burglar/fire alarm telephone lines

Local Telephone Charges Ineligible for E-Rate

These charges must be subtracted from E-Rate funding requests on Block 5:

Unlisted telephone line charges
Payphone service
Telephone Directory listing
Directory Advertising

Basic telephone service does not require a technology plan. **NOTE: Centrex service is eligible for funding, but it is NOT considered “basic” phone service and requires a technology plan!**

- Document all communications with the SLD. When writing to the SLD send all correspondence return receipt requested. When e-mailing, make a hard copy of questions and answers. Send only one type of correspondence per envelope - One certification page and attachments, for example.
- **Stay in the window, stay in the window, stay in the window.** Each year hundreds of applications are received outside the window. Although paper certifications need not be delivered to the SLD by the filing deadline, the Form 471 itself must be completely submitted by the window deadline. If the form is not submitted on time all funding will be lost.

- Have a third party review applications. Others familiar with the E-Rate application process can bring a new perspective and often spot mistakes.
- Don't take NO for an answer. Some applications have been rejected incorrectly. Some funding commitment letters have inaccurate dollar amounts or discount percentages, some funding requests have been erroneously denied. Resubmit any rejected 471 within the window and appeal any rejected form 471 after the window closes. Appeal any unfavorable decisions to the SLD. Appeals must be received by SLD within 60 days of issuance of the denial letter. Appeal letters can be as simple as a single sentence requesting an appeal with a copy of the decision letter. When an appeal is made, a strong case can be built. If SLD denies the appeal, go to the FCC. Applicants may skip the appeal to SLD and appeal directly to the FCC, although reviews at the FCC can take up to a year to resolve. A note of caution: do not file an appeal with SLD and FCC at the same time. Assistance with appeals through past FCC decisions is available at: <http://www.e-ratecentral.com> and <http://www.fundsforlearning.com>
- Apply for all entitled discounts. Everyone now pays into the Universal Service fund. Schools and libraries telecommunications bills now include a Universal Service charge of between 6 and 10 percent. Applying for discounts saves that money, and then some! The average discount for Virginia schools and libraries is slightly over 60 percent!
- Turn vendor infrastructure costs into pre-paid priority one services! Telecommunications service providers and Internet service providers may, in certain cases, include infrastructure in a successful service bid. For example, if an applicant wishes to establish a video distance learning network and the vendor must upgrade network switches in the central office to implement distance learning or other advanced service, those charges can either be folded in as one-time installation charges (up to \$500,000 in a single year, or amortized over 3 years if more than \$500,000). Another option would be to incorporate the cost of upgrades into monthly charges. Some equipment inside the school or library building may also be included as priority one services if regulations for "On-Premise" equipment are complied with.
- Certify Online using PINs.
- When seeking telecommunications services from a provider that is not a well known telecommunications carrier (Verizon, AT&T, etc.), check the FCC Telecommunications Carrier Database at <http://gulfoss2.fcc.gov/cib/form499/499a.cfm> or the SLD BEAR SPIN search at http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp to ensure the company has filed a form 499-A. A note of caution: This database is incomplete and may list some carriers that are not actually "common carriers" for E-Rate purposes and some common carriers may not be required to file the form and will not be on the database.
- One way to significantly increase the discount rate for large school divisions or library systems is through consortia. According to the Federal Communications Commission Web site, "The Commission encourages eligible schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and

negotiate lower rates.” Current regulations governing discount calculations for consortia stipulate that the consortium discount is based on the simple average of all members of the consortium.

Large school divisions or library systems with relatively low discounts can create a consortium with a single high discount school, resulting in a much higher discount for the large entity. For example, a school division with 40 schools and a 50 percent discount creates a consortium with a correctional educational school or private school with a discount of 90 percent. The resulting E-Rate discount for all 41 schools is 70 percent! The obvious advantage to the school division is an increased discount rate. The advantages to the single 90 percent school include a reliable broadband connection, better service for their students, and most importantly - assistance with the E-Rate filing and record keeping process!

To establish a consortium, an agreement should be formalized between participating entities – taking care to include only E-Rate eligible services. A Form 470 must be posted on the SLD Web site specifying services are requested on behalf of the consortium. A letter of agency must be filed with the consortium lead member containing specific SLD required language. A Form 471 must be filed, within the filing window, on behalf of the consortium. The high discount member must receive their appropriate discount; however, they may not receive the services at no charge. Finally, the consortium should be based for sound business reasons and not solely to increase E-Rate discounts. This should be documented for PIA review or audit.

These suggestions are not meant to endorse one strategy over another. Individual schools and school divisions must choose the best technology solutions to serve their needs. School and Library officials also must certify compliance with Federal Communications Regulations when filing E-Rate discount forms.

Beware of unscrupulous vendors. With \$2.25 billion at stake each year, there are vendors that will attempt to take advantage of the program. One common scam is for vendors to offer applicants “grants” to cover the costs of non-discounted services – resulting in no charges at all for applicants. Typically the vendor increases the cost of offered services far more than competitors to cover their “grant” costs. The FCC has ruled this as wasteful and will deny funding for such arrangements.

In many cases vendors will respond to Form 470 postings with offers a package of E-Rate eligible services or products. Vendors may assert that the services have been pre-approved by the SLD or that the vendor has been “certified” by the SLD. Such offers should be scrutinized very carefully.

***E-Rate Tip:* The applicant is ultimately responsible for the application and contract negotiation process. Applicants must not abdicate this responsibility to vendors.**

Consult the SLD Eligible Products Database to determine the percentage eligibility for Internal Connections:<http://www.universalservice.org/sl/tools/search-tools/eligible-products-database.aspx>

Other Resources

Schools and Libraries Division

<http://www.universalservice.org/sl>

Federal Communications Commission

<http://www.fcc.gov>

E-Rate Central

<http://www.e-ratecentral.com>

Funds for Learning

<http://www.fundsforlearning.com>

Virginia Department of Education

<http://www.doe.virginia.gov/VDOE/Technology/erate.html>

Library of Virginia

<http://vpl.lib.va.us/erate/>

Master Contracts

GSA : <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

Virginia: <http://www.vita.virginia.gov/>

Network Virginia: <http://www.networkvirginia.net/>

Virginia Procurement Act:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC020200000430000000000000>

For assistance with forms, regulations, appeals or any other E-Rate related question, contact Greg Weisiger at the Department of Education or Kendra Morgan at the Library of Virginia:

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